IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22/09/2004

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THE HONOURABLE MR.JUSTICE V.KANAGARAJ

WRIT PETITION NO.13634 OF 1997

The Management,
Tuticorin Port Trust
rep. by its Chairman,
Tuticorin. .. Petitioner

-Vs-

1. The Presiding Officer,
Industrial Tribunal,
Madras.
2. The Workman rep. by
the Secretary,
Tuticorin Port Employees
Organisation
3. Vilmala
4. Anandha Jayakumar
5. Anandha Jayalakshmi
rep. by mother and natural
guardian Vimala. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of certiorari as stated therein.

For petitioner : Mr.B.Bharathi Booshan

For respondents : Mr.K.Srinivasamurthi-R3toR5
R1-Tribunal.

:O R D E R
The above Writ Petition has been filed by the petitioner/Management praying to quash the impugned Award dated 19.11.1996, passed in I.D. No.48 of 1992 by the first respondent holding that the termination of services of one Mr.A.Somasundaram, a member of the 2nd respondent Union is not justified and also directing the petitioner herein to reinstate him with continuity of service, back-wages and all attendant benefits.

2. The case of the petitioner is that Mr.A.Somasundaram, a member of the 2nd respondent Union was initially appointed as a Mazdoor on 1.1 1.1973 and was promoted as cleaner on 1.6.1975 and subsequently promoted as Assistant

Mechanic on 19.10.1979; that he was unauthorisedly absent on many occasions during 1985 and 1986; that from 28.9.1986 onwards, he was absent without any communication to the petitioner/ management; that a letter sent to his last known address directing him to report for duty on or before 5.12.1986 was returned undelivered with remarks as 'No such addressee'; that disciplinary proceedings was initiated against him; that the call letters sent to him by Enquiry Officer called upon him to attend the enquiry on 18.3.1987 and 31.3.198 7 were also returned with the endorsement "No such addressee"; that the Enquiry Officer has submitted his report deciding the case on merits; that even thereafter, an advertisement was issued in the local daily on 8.5.1987 called upon him to report for duty on 15.5.1987, specifically indicating that in case if he did not report for duty on the said date, ex parte decision would be taken; that even thereafter he has not chosen to report for duty or to offer any reply; that therefore, the Disciplinary Authority has passed an order dismissing him from service by order dated 5.6.1987.

3. The further case of the petitioner is that after a period of five months after passing of the said order, the workman sent a letter dated 20.11.1987, against the penalty imposed, wherein he has appealed to the petitioner/Management to reconsider the order and to take him back into service; that according to Regulation 22 of Tuticorin Port Employees (Classification, Control and Appeal)Regulations, 1979, the appeal should have preferred within a period of 45 days from the date on which a copy of the order is delivered to the appellant; that since the appeal was not preferred within the prescribed period of limitation i.e. within 45 days, the same was rejected by the petitioner/Management as time barred.

4. The further case of the petitioner is that aggrieved against the rejection of his representation dated 20.11.1987, the workman raised an Industrial Dispute in I.D.No.48 of 1992 on the file of the first respondent; that the first respondent by its Award dated 19.11.1996 directed reinstatement with continuity of service and back-wages. It is being aggrieved against the said Award the petitioner/management has come forward to file the above writ petition praying for the relief extracted supra.

5. In the counter affidavit filed by the respondents 3 to 5 besides usually denying the allegations in the affidavit filed in support of the above writ petition, they would further submit that the Enquiry Officer has failed to conduct the enquiry in the manner known to law by following the procedure of giving notice to the workman; that the order of termination has been passed without serving any notice and without conducting enquiry on the workman; that the report of the Enquiry Officer does not contain any reason to accept the charge; that the appeal filed by the workman should have been heard by Chairman of Port Trust, whereas he delegated the said power to the Superintending Engineer who simply confirmed the order as time barred even without considering the merits of the case. On such averments, they would pray for dismissal of the above writ petition.

6. Heard the learned counsel for the petitioner and the respondents as well and the materials placed on record have been perused.

7. During arguments, the learned counsel for the petitioner would

submit that though the Industrial Tribunal itself has accepted the conduct of the workman i.e. unauthorisedly absent from 28.9.1986 till 6.3 .1987 and also held against the plea of the workman to the effect that the Enquiry Officer was the executive (Mechanical Division I) who was not the immediate superior officer of the workman concerned, it has erroneously passed the award directing the petitioner to reinstate the workman with back-wages; that the Tribunal ought to have considered that the appeal should have been filed in proper form within 45 days, but he does not do so; that even against order of the appellate authority, one more opportunity is available to the workman to file review, but without exhausting the said remedy the petitioners have straightaway come forward to file this Writ Petition invoking Article 2 26 of the Constitution of India. On such averments the petitioner would pray for the relief extracted supra.

8. On the contrary, the learned counsel for the respondents sailing on the award of the learned Tribunal would further submit that the dismissal of appeal preferred by him is not in accordance with rules; that the appointment of his immediate superior as enquiry officer is bad in law; that the charges framed against him were vague; that the enquiry officer has mechanically given his fin ding without application of mind; that when once the disciplinary authority held the period of absenteeism to be treated as dies non which itself is a major punishment, imposing one more punishment of removing him from service is against the rules and regulations and also the principles of natural justice; the petitioner has initiated disciplinary proceedings and conducted enquiry even without serving proper notice on the workman; that the Tribunal in its Award specifically stated that it became the duty of the enquiry officer to take proper publication directing the attention of the delinquent employee to appear in the enquiry. At this juncture, the learned counsel for the respondents would cite a decision reported in 1961 SC 1158 (The Bata Shoe Co., (P) Ltd., v. D.N. Ganguly and others) wherein it has been held:
" It could not be said that the workmen would have notice that they were among those to whom charge-sheets had been sent or about whom charge-sheets had been displayed on the notice boards. The proper course was when the registered notices came back unserved in the case of these workmen to publish notices in their names in some newspaper in the regional language with a wide circulation in the State along with the charges framed against them."
The learned counsel for the respondents would further submit that the petitioner has published notice in the local Tamil News paper saying that if he fails to attend duty on or before 15.5.1987, he will be set ex parte and punishment will be imposed on him as per rules, but even before the said publication, the enquiry officer had set him ex parte and submitted his enquiry report; that further, in the said publication, the management has not specifically mentioned about the imposing of the proposed punishment of dismissal against him, but it has merely stated that proper punishment will be imposed; that such a notice regarding the lack of proposed punishment is also not in accordance with law. On such arguments, the learned counsel for the respondents would pray for dismissal of the above writ petition.

9. In consideration of the facts pleaded, having regard to the materials placed on record, particularly the dismissal order of the

petitioner/management, the order of the appellate authority rejecting the appeal preferred by the workman and the impugned Award passed by the Tribunal below, thereby setting aside the order of dismissal by the petitioner and upon hearing the learned counsel for both, this Court is able to see that the petitioner/management has neither examined any witness nor any document has been marked on the side of the petitioner/management either to substantiate the charge against the workman or to prove the unauthorised absence and therefore, it is clear that the enquiry conducted by the petitioner/management was not proper and in accordance with law as rightly arrived at by the learned Tribunal below. Further it is noticed that even in the publication the management has not specifically

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mentioned about the proposed punishment of dismissal against him so as to give an opportunity for the workman to put forth his case. Such a notice regarding the lack of proposed

punishment is also against the principles of natural justice. Considering all the above facts and circumstances, this Court does not find any irregularity or inconsistency or perversity in the Award of the Tribunal below and this writ petition does not merit acceptance and it becomes only liable to be dismissed and hence the following order:

In result,

(i) for the foregoing reasons assigned, this writ petition does not merit acceptance and is dismissed accordingly;

(ii) the impugned Award dated 19.11.1996, passed in I.D.No.48 of 19 92 by the first respondent is confirmed;

(iii) however, in the circumstances of the case, there will be no order as to costs.

Index:Yes

Internet:Yes

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To

The Presiding Officer, Industrial Tribunal, Madras.

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